

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 03-0210P

**Withholding Tax
For the Month of May 2001**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed for the late filing of the monthly withholding tax return for May 2001.

The taxpayer is a corporation domiciled in Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty be waived as the Department took too much time, almost two years, in sending the original proposed assessment to the taxpayer. Because of the lengthy time, the taxpayer was unable to review the filing records as the filing records are in storage at the taxpayer's place of business and it is difficult for the taxpayer to access the records needed to research the discrepancy.

The Department points out the statute of limitations is three years in this instance both for the taxpayer and the Department. As the Department sent the notice within the three year period, the notice is legally deemed to be timely sent.

The burden of proof in this situation is on the taxpayer. It is the taxpayer's responsibility to provide the records which will support the taxpayer's contention the penalty should be

waived. Nevertheless, the Department does have the records and the records show the taxpayer filed three days late.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied

TB/TG/JMS—030409